CITY ATTORNEY

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Attorneys for Plaintiff
WILLIAM TAYLOR

UNLIMITED JURISDICTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WILLIAM TAYLOR,

Plaintiff,

vs.

CITY OF BURBANK, ET AL.,

Defendants.

CASE NO. BC422252

[Assigned to the Hon. John L. Segal, Judge, Dept. "50"]

DECLARATION OF CHRISTOPHER BRIZZOLARA IN SUPPORT OF REPLY RE: MOTION FOR ATTORNEYS FEES

Date: July 9, 2012
Time: 8:30 a.m.
Dept.: 50

I, Christopher Brizzolara, do declare as follows:

1. I am one of the counsel of record and one of the trial counsel for the plaintiff in the above-captioned matter. I base this declaration on my personal knowledge. I am over 18 years of age, and if called to testify regarding the contents of this declaration, I could and would competently testify thereto. I submit this declaration in support of the reply in support of plaintiff's motion for attorneys fees.

2. Defendant contends that the billing statements of plaintiff's counsel are allegedly impermissibly vague because they contain entries regarding making and receiving telephone calls, and sending and receiving e-mails and correspondence without setting forth the substance of the

communications in such telephone calls, e-mails, and correspondence. However, the substance of any information communicated via any telephone calls, e-mails, and correspondence between the various counsel for plaintiff, or between counsel for plaintiff and plaintiff, is protected by either the attorney-work product doctrine or the attorney-client privilege, or both. Without waiving either of these privileges, I can categorically state that each of my billing entries submitted in this matter regarding sending and receiving e-mails and correspondence related to issues directly relevant to and were reasonable and necessary for the prosecution of plaintiff's FEHA claims in this matter.

3. Defendant makes the unfounded claim that I spent too much time reviewing correspondence and memoranda from my client. Defendant inaccurately claims that my billing statements allegedly contain 93.01 hours reviewing and analyzing correspondence and memoranda from my client purportedly set forth in 40 billing entries. However, all of my time entries identified by defendant in its chart allegedly summarizing such services (Dec. of Frank, Ex. "C") total only 33.1 hours in a total of 17 billing entries. These tasks by me were performed over a period of time extending from October, 2009 through June 2012 (a period of 31 months), so that by using defendant's own chart, I spent approximately 1 hour a month and less than 15 minutes a week during the pendency of this case reviewing correspondence and memoranda from my client, which is hardly "highly suggestive of bill padding" as contended by defendant, and instead evidences exactly the opposite.

4. Unlike defendant and its multiple law firms, attorneys, and attendant legal support staff, Mr. Smith and myself are solo practitioners. Unlike defendant and its attorneys, Mr. Smith and myself could not ethically contact any member of defendant's control group, and thus were required to rely in many instances upon the background, training, and experience of our client, the defendant's former Deputy Chief of Police, regarding the defendant's policies, practices, and procedures, as well as other information unique to the Burbank Police Department ("BPD").

5. Further, unlike defendant, Mr. Smith and myself did not have unlimited resources to employ multiple paralegals and alleged experts or multiple consultants such as Mr. Gardiner, Mr. Stehr, and Mr. Lynch, among others, to review and summarize the extensive materials produced in this

matter by defendant pursuant to Pitchess motions and other discovery vehicles. The trial court recognized this fact by specifically allowing in the Court's protective order signed August 11, 2011 that Mr. Taylor be provided with and allowed to review his own copy of the extensive materials produced by defendant pursuant to plaintiff's Pitchess motions.

6. Plaintiff has not sought to bill defendant for any of the time he spent personally in reviewing and summarizing materials in this case. Had counsel for plaintiff performed all of the work performed by Mr. Taylor on this case, plaintiff's attorneys fees would be exponentially higher. Thus, if anything, defendant received a "windfall" by Mr. Taylor actively participating in the litigation of his case, rather than plaintiff's counsel billing for reviewing and summarizing the vast amount of documents and other materials produced during discovery in this case that was undertaken by Mr. Taylor.

7. Mr. Frank, who asserts that he was the defendant's "lead counsel" in this matter, admits that in his declaration that "$400.00 to $500.00 per hour is nearer to the rate that is consistent with the prevailing rate for comparable legal services through other counsel of comparable skill." (Dec. of Frank, 2: 7 - 8.) However, Mr. Frank offers no foundation for this opinion, or why his opinion is entitled to any weight whatsoever as opposed to the recent court ordered finding of the Honorable Judge Teresa Sanchez-Gordon in the case of *Bakotich, et al. v. City of Los Angeles* in which both Mr. Smith and myself were awarded a reasonable hourly fee of $600.00 per hour in that case. Further, Mr. Frank offers no foundation for his opinion as to the reasonable hourly rates of competent plaintiff employment law attorneys in Southern California. In contrast, I have and continue to work with and/or represent numerous attorneys in Southern California, including plaintiff's attorneys who specialize in the field of employment litigation, and the hourly rate of $600.00 per hour requested by Mr. Smith and myself is consistent with the reasonable hourly rates of other plaintiff's attorneys of comparable experience in the field of employment litigation.

8. Further, both Mr. Smith and myself were previously awarded the reasonable hourly rate of $500.00 per hour for our legal services provided in FEHA actions by multiple judges in both state and federal court in 2007. In the intervening five years the background, training, and

experience of Mr. Smith and myself has increased, as evidenced by the at least eleven jury verdicts and/or judgments in excess of one million dollars, and at least three other substantial verdicts and/or judgments ranging between at least $635,000 to at least $995,000 in employment law actions obtained by Mr. Smith and/or myself subsequent to 2007. Since being awarded a $500.00 reasonable hourly rate in 2007, Mr. Smith and/or myself have obtained jury verdicts and/or judgments in employment law cases totaling approximately $20,000,000. I respectfully assert that a modest increase in our hourly rate of only $20.00 per hour per year over the last five years is quite reasonable, and Mr. Smith and myself are willing to match our trial results in the last five years with any other plaintiff's attorneys practicing in the field of employment law in Southern California during that same time frame.

9. Defendant has challenged the attorneys fees requested in this matter on the basis that plaintiff's attorneys, and in particular Benedon & Serlin, have not been handling this matter on a contingency fee basis. However, defendant's contentions on this issue are unfounded. All of the costs in this matter have been advanced by plaintiff's attorneys, including myself. The costs advanced by plaintiff's attorneys in this matter to date are in the range of $60,000. These costs were all advanced on a contingent basis, and will not be recovered unless and until plaintiff obtains a monetary recovery in this matter. Further, all of the legal services provided by counsel for plaintiff in this matter were provided on a contingent basis. None of plaintiff's counsel have been paid for any of their legal services, and will not be paid unless and until plaintiff obtains a monetary recovery in this matter.

10. Additionally, based upon the "take no prisoners" approach of defendant and its counsel to date, as well as information that I have been provided regarding a recent vote of the defendant's City Council, I anticipate that defendant will appeal the judgment in this matter. As such, in all likelihood, based upon my experience regarding the length of appeals in this type of case, the judgment in this matter will not become final and payable to plaintiff and his counsel for at least 1/1/2 to 2 years. Thus, it appears likely that all of plaintiff's counsel will experience a delay in payment for their services for an additional 1 ½ to 2 years (until the years 2014 or 2015). Since

Mr. Smith and myself have been providing legal services in this matter since 2009, we will therefore likely experience a delay in payment of at between 5 ½ to 6 ½ years for all of our legal services in this matter, as well as the recovery of the substantial costs that we have incurred since the commencement of this matter in 2009.

11. Defendant also makes the unfounded claim that we engaged in "unnecessary litigation" regarding this matter. Defendant claims that we "conceded" that the second set of Pitchess motions filed by plaintiff should be filed under seal. However, at no point did I ever "concede" that any Pitchess motion should be filed under seal. As defendant admits, the previous trial court judge assigned to this matter, the Honorable Judge John Shepard Wiley, Jr., agreed with plaintiff's counsel that the second set of Pitchess motions need not be filed under seal. (Opp., 7: 18 - 19.) We opposed defendant's writ petition to seal plaintiff's second set of Pitchess motions. In an unprecedented decision, the Second District Court of Appeal overturned Judge Wiley's ruling that plaintiff's second set of Pitchess motions need not be filed under seal. Notably, the Court of Appeal's decision on this issue was not published, and I am aware of no published decision that requires that a Pitchess motion, as opposed to the documents produced pursuant to a Pitchess motion, be filed under seal. Plaintiff and his counsel were fully entitled to contest defendant's claim that the plaintiff's second set of Pitchess motions be filed under seal, and in fact prevailed upon that issue in the trial court. There is no legitimate basis for reducing any of plaintiff's requested attorneys fees based upon the litigation of this novel issue.

12. Submitted herewith as Ex. "A" is a true and correct copy of a press release issued by the City of Burbank dated December 10, 2009 (less than three months after plaintiff filed his lawsuit in this matter) which I downloaded from the City of Burbank's official web site. In this press release, defendant announced that: "The City of Burbank has retained prominent attorneys Merrick Bobb and Debra Wong Yang as special counsel to assist with litigation and policy issues involving the Burbank Police Department" and "Bobb and Wong Yang will advise the City Manager, City Attorney and City Council on litigation and policy issues and work closely with the Interim Chief of Police during this transition period before a permanent Chief is named."

Submitted herewith as Exs. "B" and "C" are true and correct copies of agendas for meetings of the Burbank City Council dated January 5, 2010 and November 23, 2010, respectively, which I downloaded from the City of Burbank's official web site. In the agenda of January 5, 2010 (Ex. "B"), at budget item 7, defendant's City Council approved appropriating $1,000,000 to fund the payment of Merrick Bobb and Debra Wong Yang of Gibson, Dunn & Crutcher, LLP to assist in "appropriately respond(ing) to the challenges in the Police Department, to develop and implement policies and procedures to protect against similar situations arising in the future, and in an attempt to adequately position the City to be able to respond to future legal challenges ...". In the agenda of November 23, 2010 (Ex. "C"), at item 4, it is set forth that: "In response to a number of serious concerns about activities at the Police Department, the City Attorney's Office retained two expert outside attorneys, Merrick Bobb and Debra Wong Yang, to provide oversight in going forward with Police Department matters. Mr. Bobb has recently provided the City with a draft strategic plan for suggestions on adopting policies, procedures, and practices in various areas of police operations. These proposals are not in final form. However, since Mr. Bobb was retained by the City Attorney these proposals are protected by the attorney-client privilege and are thereby confidential. In light of the joint meeting of the Council and the Police Commission, Council Member Golanski has asked that a portion of Mr. Bobb's proposals which refer to civilian participation and oversight be made public. The Council may do so by majority vote."

13. Defendant in this case claimed as part of its defense that plaintiff was demoted from Deputy Chief to Captain because of problems in the operations of the Burbank Police Department. As such, it was reasonable and necessary for us to attempt to obtain discovery regarding what recommendations, if any, had been made by Mr. Bobb or Ms. Wong Yang in the operation of the Burbank Police Department, and if any such recommendations had anything to do with any alleged mismanagement or other purported wrongdoing by the plaintiff. Simply because defendant claimed that the recommendations of Mr. Bobb and Ms. Wong Yang were privileged does not establish that we were not reasonably entitled to seek such information, particularly since one of defendant's own council members asked that a portion of Mr. Bobb's be made public.

We attempted to do so via Pitchess motion since defendant repeatedly asserted the Pitchess privileges to discovery requests. We assumed that defendant would do so as to Mr. Bobb and Ms. Wong Yang if they had reviewed confidential police personnel records as part of their services, which we assumed they would have done in order to make any meaningful recommendations to the defendant.

14. Further, even assuming that defendant's assertions of the attorney-client privilege were correct as to all of the communications and conduct of Mr. Bobb and Ms. Wong Yang, which we still do not concede, then Burbank was retaining yet other attorneys in addition to the attorneys it had already retained, and its own City Attorneys, in regard to "litigation issues" involving the City of Burbank Police Department. One of the "litigation matters" involving the Burbank Police Department at that time was the instant lawsuit.

15. Defendant claims in its opposition that this was "a garden variety employment case". (Opp., 12: 26 - 28.) However, in my experience in litigating numerous employment law cases, "garden variety employment cases" do not require a defendant: to retain and/or seek the services of: a) at least four law firms (Burke, Williams, et al., Ballard, Rosenberg, et al., Stone & Busailah, and Liebert, Cassidy, et al.); b) multiple attorneys and/or other personnel from its own City Attorney's office; c) alleged "expert attorneys" Merrick Bobb and Debra Wong-Yang; and d) at least three alleged police practices experts and/or consultants (James Gardiner, Tim Stehr, and Patrick Lynch).

16. I have been previously involved in several employment law cases involving multiple plaintiffs that proceeded through a jury trial where I was required to do far less work and spend far less time than the instant case. Mr. Smith and myself, as well as other employment law attorneys with whom I am or have been associated as co-counsel, frequently litigate against public entities in high profile and/or potentially substantial damage employment law cases where the defendant is represented only by one or at most two members of its own City Attorney's or County Counsel's office. I have never been involved in an employment law case where the defendant retained as defense counsel or otherwise had involved as many attorneys as the instant case.

17. I respectfully submit that plaintiff is entitle to an attorney fee multiplier in this case based upon the relevant factors to be considered in deciding whether to award a multiplier.

a) The case involved an extensive amount of time and labor over an extended period of time.

b) The case involved at least one novel issue (whether a Pitchess motion should be sealed), which issue we won at the trial court level.

c) The case has already proceeded up to the Court of Appeal on three different writ petitions filed by defendant, which required plaintiff to retain the services of appellate specialists. Plaintiff was successful on the most important of these writ petitions, in which the Court of Appeal affirmed the trial court's order, after conducting an in camera inspection, that numerous documents sought in plaintiff's first Pitchess motion be produced to plaintiff. A true and correct of this non-published decision is submitted herewith as Ex. "D".

d) The case required us to combat the combined substantial background, training, and experience of defendant's multiple experienced counsel.

e) The amount of time that was required to be devoted to this case required that both Mr. Smith and myself decline other employment. Mr. Smith and myself are contacted on virtually a daily basis by law enforcement officers, firefighter, and other public entity employees, as well as other individuals, seeking representation in potentially lucrative employment law and other matters. Both Mr. Smith and myself were required to decline accepting numerous meritorious cases because of our acceptance of the representation of plaintiff in this case.

f) As set forth in the declarations we have submitted in this case, multiple courts have previously awarded us substantial amounts of attorneys fees, and multipliers, in employment law cases. In my previous declaration I also detailed multiple attorney fee awards in excess of $1,000,000 that myself and my co-counsel have been awarded in other cases.

g) Our attorneys fees and the recovery of our costs in this case are contingent upon the ultimate success of this litigation. Our recovery of such fees and costs will be delayed by the defendant for an additional substantial amount of time if defendant appeals the judgment in this matter. I have recently been advised that defendants City Council has apparently voted to

approve an appeal of the judgment in this matter. In the meantime, plaintiff's counsel will be required to use their other income, savings, or incur debt to keep their law practices afloat and themselves and their families fed during this years-long litigation. Failing to fully compensate plaintiff's counsel for the risk in bringing even this wholly meritorious case would effectively immunize a large or politically powerful defendant such as the defendant City of Burbank from being held to answer for constitutional-based deprivations such as retaliation in violation of FEHA, resulting in harm to the public.

h) Mr. Smith and I obtained a substantial verdict and judgment in excess of $1,000,000 for plaintiff in this case.

I) Our declarations set forth the experience, reputation, and ability of Mr. Smith and myself in employment law litigation, including, *inter alia*, a seminal California Supreme Court case regarding the application of the doctrine of equitable tolling of the statute of limitations in regard to the filing of a DFEH complaint, published law journal and other articles that I have authored regarding employment law and representation of law enforcement officers, numerous seven figure verdicts and judgments in employment law and other cases obtained by Mr. Smith and/or myself, Mr. Smith being nominated on multiple occasions as the "Trial Lawyer of the Year", as well as other accomplishments.

j) This case involved litigating against the defendant regarding the important issues of FEHA based retaliation perpetrated by defendant against plaintiff, a long time and loyal employee of defendant who rose through the ranks to the second in command of the defendant's police department prior to being terminated by defendant in violation of FEHA. The instant litigation served the important public purposes underlying FEHA to deter and attempt to eliminate retaliation by defendant based upon activities protected by FEHA.

18. The purpose of a multiplier for contingent risk is to bring the financial incentive for attorneys enforcing important constitutional rights into line with incentives they have to undertake claims for which they are paid on a fee-for services-basis. A multiplier in this case would not constitute a "windfall" as contended by defendant but instead would provide a fee enhancement reflecting the

risk that plaintiff's counsel will not receive payment if the suit does not succeed, as well as the delay in payment of attorneys fees to plaintiff's counsel. A multiplier herein would reflect that lawyers, such as plaintiff's counsel, who both bear the risk of not being paid and provide legal services are not receiving the fair market value of their work if they are paid only for the second of these functions.

19. Defendant also claims that plaintiff's attorneys fees should be apportioned based upon plaintiff also having alleged a cause of action for violation of *Labor Code* Section 1102.5. However, it was defendant, and not plaintiff, that proposed the use of a general verdict. I personally prepared and submitted special verdict forms to the Court and to defense counsel in which the jury would have set forth specifically the bases for the jury's damages awards, and defendant's objected to using these special verdict forms. Defendant should not now be allowed to speculate as to what portion of the attorneys fees in this case should be allocated to plaintiff's *Labor Code* Section 1102.5 cause of action.

20. Defendant also asserts that any attorneys fees sought by plaintiff surrounding plaintiff's Pitchess motions should be allocated to plaintiff's *Labor Code* Section 1102.5 claim. However, plaintiff's initial Pitchess motion sought the documents that allegedly supported the termination of plaintiff for purportedly obstructing the Portos I investigation and providing untruthful statements in Portos II, which were the grounds alleged by defendant as the legitimate non-retaliatory reasons for terminating plaintiff after he had engaged in activities protected by FEHA. After losing this motion, and after the Court had conducted an appropriate in camera inspection and ordered that defendant to produce to plaintiff numerous documents, the defendant filed a writ petition with the Court of Appeal, which was denied. Plaintiff's second set of Pitchess motions included a Pitchess motion which was granted by the trial court, and which motion was specifically directed to obtaining information and evidence in support of plaintiff's claims that he been retaliated against for reporting and opposing sexual harassment and sexual discrimination in violation of FEHA.

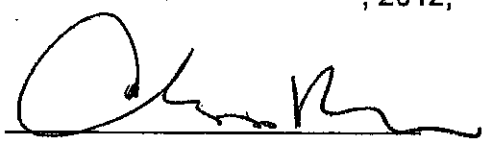
21. In regard to the Pitchess motion regarding Lt. Rosoff, the motion was also granted by the

trial court. However, defendant has inaccurately stated in its moving papers that Lt. Rosoff testified at trial, which is incorrect. Lt. Rosoff did not testify at trial and very little of the trial was devoted to the litigation of issues pertaining to Lt. Rosoff.

22. Further, the litigation of plaintiff's FEHA claims were and are inextricably intertwined with the litigation of plaintiff's *Labor Code* Section 1102.5 claims. Plaintiff's reporting and/or protesting activities that violated FEHA were and are also activities protected by *Labor Code* Section 1102.5, since violations of FEHA are violations of state statutes. Here, In light of the strong interrelationship between plaintiff's claims, the Court should not apportion any significant portion of plaintiff's requested attorneys fees.

I declare the foregoing to be true and correct under penalty of perjury under the laws of the State of California.

Executed this 28th day of June, 2012, in Santa Monica, California.



Christopher Brizzolara

EXHIBIT "A"

City Hires Special Counsel
Posted Date: 12/10/2009 2:30 PM

City Hires Renowned Law Enforcement Oversight Experts

Nationally Recognized Attorneys to Assist with Police Department Litigation

BURBANK, Calif. (December 10, 2009) – The City of Burbank has retained prominent attorneys Merrick Bobb and Debra Wong Yang as special counsel to assist with litigation and policy issues involving the Burbank Police Department.

Bobb is the founder and Director of the Police Assessment Resource Center (PARC), a national organization focused on police oversight and reform. He was a Deputy General Counsel for the Christopher Commission, which investigated the Los Angeles Police Department in the aftermath of the Rodney King incident. He was General Counsel of the Kolts investigation of the Los Angeles County Sheriff's Department and has monitored the Sheriff's Department for the Board of Supervisors for 17 years.

Wong Yang is a partner in Gibson, Dunn & Crutcher, LLP, and is Co-Chair of the firm's Crisis Management Practice Group, and currently a member of the Los Angeles Police Commission. She was formerly the United States Attorney in Los Angeles and in that position also served as the Chair of the Civil Rights subcommittee for the Attorney General. Prior to becoming U.S. Attorney, she was appointed to the Los Angeles Municipal Court in 1997 and became a member of the Los Angeles Superior Court bench in 2000.

"Merrick and Debra are both well-respected for their extensive work in law enforcement," says City Manager Michael Flad. "We believe their expertise will be invaluable during this crucial time. This is another important step the City is taking to be proactive in addressing the problems the Police Department is experiencing."

Bobb and Wong Yang will advise the City Manager, City Attorney and City Council on litigation and policy issues and work closely with the Interim Police Chief during the transition period before a permanent Chief is named.

They will begin work immediately.

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EXHIBIT "B"

COUNCIL AGENDA - CITY OF BURBANK

TUESDAY, JANUARY 5, 2010
5:00 P.M.

This agenda contains a summary of each item of business which the Council may discuss or act on at this meeting. The agenda packet consisting of the staff reports and all other documentation relating to each item on this agenda are on file in the office of the City Clerk located at City Hall, 275 E. Olive Avenue, at the reference desks at the three public libraries located at 110 N. Glenoaks Blvd., 300 N. Buena Vista St. and 3323 W. Victory Blvd., during normal business hours, and will be posted on the City's website at www.burbankusa.com. Any writings or documents provided to the Council regarding any item on this agenda subsequent to distribution of the agenda packet will be made available for public inspection in the office of the City Clerk at City Hall located at 275 E. Olive Avenue, during normal business hours. If you have a question about any matter on the agenda, please call the office of the City Clerk at (818) 238-5851. The City Council Chamber is disabled accessible. Auxiliary aids and services are available for individuals with speech, vision or hearing impairments (48-hour notice is required). Please contact the ADA Coordinator at (818) 238-5424 voice or (818) 238-5035 TDD with questions or concerns.

A. CALL TO ORDER:

B. CLOSED SESSION IN CITY HALL BASEMENT LUNCH ROOM/CONFERENCE ROOM:

a. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: In the Matter of the Application of the Burbank-Glendale- Pasadena Airport Authority. Case No.: OAH No. L2001-110412 Brief description and nature of case: Application of Burbank-Glendale-Pasadena Airport Authority made to Department of Transportation, State of California for Noise Variance.

b. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Christopher Lee Dunn v. Burbank Police Department, et al. Case No.: BC417928 "Dunn 1" Brief description and nature of case: Alleged wrongful termination due to discrimination.

c. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Christopher Lee Dunn v. City of Burbank, et al. Case No.: BC418792 "Dunn 2" Brief description and nature of case: Defamation and wrongful release of

personnel information.

d. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Omar Rodriguez et al. v. Burbank Police Department, et al. Case No.: BC 414602 Brief description and nature of case: Employment discrimination, infliction of emotional distress, and other related causes of action.

e. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: William Taylor v. City of Burbank, et al. Case No.: BC 422252 Brief description and nature of case: Employment discrimination.

f. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Angelo Dahlia vs. City of Burbank, et al. Case No.: CV09-8453 RSWL (JEMx) Brief description and nature of case: Civil rights.

g. Conference with Legal Counsel - Anticipated Litigation (City as potential defendant): Pursuant to Govt. Code §54956.9(b)(1) Number of potential case(s): 2

C. CALL TO ORDER: 6:00 P.M.

D. INVOCATION: The Courts have concluded that sectarian prayer as part of City Council meetings is not permitted under the Constitution.

E. FLAG SALUTE:

F. ROLL CALL:

F1. MEMORIAL ADJOURNMENT: DONALD FARQUHAR.

F2. MEMORIAL ADJOURNMENT: CANDIDO CONNIE GONZALEZ.

F3. ANNOUNCEMENT: FIVE POINTS DEDICATION.

F4. RECOGNITION: BURBANK TOURNAMENT OF ROSES ASSOCIATION.

G. COUNCIL COMMENTS: (Including reporting on Council Committee Assignments)

H. INTRODUCTION OF ADDITIONAL AGENDA ITEMS:

I. REPORTING ON CLOSED SESSION:

J. PUBLIC COMMENT: (Five minutes on any matter concerning City Business.) A YELLOW card must be completed and presented to the City Clerk.

K. COUNCIL AND STAFF RESPONSE TO PUBLIC COMMENT:

L. CONSENT CALENDAR: (Items 1 through 3)

1. BURBANK WATER AND POWER WATER AND ELECTRIC MONTHLY OPERATIONS REPORT: November water quality and system reliability were as planned and within standards. The Burbank Operable Unit (BOU) operated at approximately 75.35 percent of capacity (budget 75 percent) in November and provided 58.18 percent (budget 52.27 percent) of Burbank's potable water. The BOU exceeded its goal of being available 90 percent of the time by being available 99.13 percent of the time. November estimated water fiscal year-to-date financial results are better than budgeted primarily as a result of purchasing less water than planned from the Metropolitan Water District and lower than planned operating expenses. There was one power outage in November. Equipment failure caused 142 customers to be without power for 16 minutes. The November estimated electric fund fiscal year-to-date financial results are better than budgeted due to lower than planned energy costs and operating expenses.

   Recommendation:

   Note and file.
   Noted and filed.

   Item No. 1 Staff Report

   Item No. 1 Attachments

3. APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT FOR A PUBLIC ART INSTALLATION ALONG CHANDLER BIKEWAY: The purpose of this report is to request Council approval of a Professional Services Agreement with Shiela Cavalluzzi to design and fabricate a public art installation along the Chandler Bikeway. On April 29, 2008, the Council approved and appropriated $60,000 for the development of a third public art installation along the Chandler Bikeway. On October 20, 2009, following a Request for Qualifications/Proposals process, the Council selected Shiela Cavalluzzi's slightly larger than life bronze sculpture of a trackwalker

as the third public art installation along the Chandler Bikeway. The duty of a trackwalker was to keep traveling passengers and cargo safe by examining the condition of the railroad tracks. The sculpture is of a lone figure walking along a section of the track dressed in rail uniform, holding his lantern and tools with an always watchful and protective gaze.

Recommendation:

RESOLUTION NO. 28,058:
A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK APPROVING THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BURBANK AND SHIELA CAVALLUZZI TO DESIGN AND FABRICATE A PUBLIC ART INSTALLATION ALONG THE CHANDLER BIKEWAY.
5-0

Item No. 3 Staff Report

Item No. 3 Agreement

Item No. 3 Resolution

2. APPROVAL OF AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT FOR THE FIVE POINTS PUBLIC ART INSTALLATION: The purpose of this report is to request Council approval of a second amendment to the Professional Services Agreement (PSA) with Andrea Favilli for the fabrication and installation of public art at Five Points and to amend the Fiscal Year 2009-10 Budget. The sculpture of Dr. Burbank was completed in August 2008 and was shipped to the City in October 2008. The total funds originally appropriated towards this project were to cover all design, fabrication and installation fees. However, since the completion and delivery of the art piece, two additional unexpected costs have been incurred relative to a Use Tax and structural calculations. Because both of these expenses were not anticipated, staff is requesting that the Council approve a second amendment to the PSA.

Recommendation:

A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK APPROVING AND AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF BURBANK AND FAVILLI STUDIO FOR THE FIVE POINTS PUBLIC ART INSTALLATION AND AMENDING THE FY

2009-2010 ANNUAL BUDGET IN THE AMOUNT OF $15,242.87.

Item No. 2 Staff Report

Item No. 2 Agreement

Item No. 2 Resolution

M. REPORTS TO COUNCIL:

4. COUNCIL MEMBER GOLONSKI'S REQUEST FOR THE COUNCIL TO CONSIDER AGENDIZING THE POSSIBILITY OF REMOVING TWO CIVIL SERVICE BOARD MEMBERS - STEP 1: At the November 24, 2009 Council meeting, Council Member Golonski requested staff to agendize a discussion of what he believes were the highly inappropriate comments made at the last two Civil Service Board meetings and to also include a discussion of possibly removing the two members who made those inappropriate comments. This is the first step in a two-step agenda process.

Recommendation:

Staff recommends that the Council discuss and consider the request from Council Member Golonski and direct staff as necessary.

Item No. 4 Staff Report

Item No. 4 Attachments

5. CLARIFICATION OF POLICE COMMISSION DUTIES - STEP 1: At the November 17, 2009 Council Meeting, Council Member Gordon requested a discussion regarding the letter from the City of Burbank Police Commission addressed to the Council dated October 29, 2009. The Police Commission requested that the Council clarify the duties and obligations of the Commission and select a liaison from the Council to attend quarterly commission meetings. This is the first step in the two-step agenda process.

Recommendation:

Staff recommends that the Council discuss the matter and provide further direction.

Item No. 5 Staff Report

Item No. 5 Attachments

6. BUDGET AMENDMENT FOR THE FUNDING OF POLICE INVESTIGATIONS: To fund the outside attorney, Richard Kreisler of Liebert Cassidy Whitmore, and James Gardiner, a retired Police Chief, to conduct the independent investigation of the Police Department; $200,000 in additional funds will be required. Of that amount, $125,000 is needed to fund additional investigational costs by James Gardiner Associates, and $75,000 is needed for the Professional Services Agreement for Liebert Cassidy Whitmore. The Fiscal Year 2009-10 budget would be amended by appropriating $200,000 from Account No. 001.ND000.30004.0000.000000 (Non-Departmental Unappropriated Balance) to Account No. 001.CAO1A.62055.0000.000000 (City Attorney Outside Legal Services) for the purpose of funding professional services to assist in the police investigation.

   Recommendation:

   RESOLUTION NO. 28,059:
   A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK AMENDING THE FISCAL YEAR 2009-2010 ANNUAL BUDGET BY APPROPRIATING $200,000 FOR THE PURPOSE OF FUNDING THE PROFESSIONAL SERVICES AGREEMENT WITH LIEBERT CASSIDY WHITMORE AND JAMES GARDINER ASSOCIATES.
   5-0

   Item No. 6 Staff Report

   Item No. 6 Resolution

7. BUDGET AMENDMENT - POLICE STRATEGIC OVERSIGHT: To fund special counsel, Merrick Bobb of Police Assessment Resource Center, and Debra Wong Yang of Gibson Dunn & Crutcher LLP, to assist the City Attorney to appropriately respond to the challenges in the Police Department, to develop and implement policies and procedures to protect against similar situations arising in the future, and in an attempt to adequately position the City to be able to respond to future legal challenges, the Fiscal Year 2009-10 budget should be amended by appropriating $1,000,000 from Account No. 001.ND000.30004.0000.000000 (General Fund, Unappropriated Fund Balance) to Account No. 001.ND000.62055.1000.000000 (Non-departmental, Outside Legal Services - Strategic Legal Costs).

   Recommendation:

   RESOLUTION NO. 28,060:

A RESOLUTION OF THE COUNCIL OF THE CITY OF BURBANK AMENDING THE FISCAL YEAR 2009-2010 ANNUAL BUDGET BY APPROPRIATING $1,000,000 FOR THE PURPOSE OF FUNDING SERVICES PROVIDED BY GIBSON, DUNN & CRUTCHER LLP AND POLICE ASSESSMENT RESOURCE CENTER.
4-1 Dr. Gordon no

Item No. 7 Staff Report

Item No. 7 Resolution

N. PUBLIC COMMENT: (Three minutes on any matter concerning the business of the City.) A GREEN card must be completed and presented to the City Clerk.

O. COUNCIL AND STAFF RESPONSE TO PUBLIC COMMENT:

P. ADJOURNMENT:

For a copy of the agenda and related staff reports, please visit the City of Burbank's Web Site: www.burbankusa.com

EXHIBIT "C"

COUNCIL AGENDA - CITY OF BURBANK
TUESDAY, NOVEMBER 23, 2010
JOINT CITY COUNCIL - POLICE COMMISSION MEETING
5:00 P.M.
CITY COUNCIL CHAMBER - 275 EAST OLIVE AVENUE

This agenda contains a summary of each item of business which the Council may discuss or act on at this meeting. The agenda packet consisting of the staff reports and all other documentation relating to each item on this agenda are on file in the office of the City Clerk located at City Hall, 275 E. Olive Avenue, at the reference desks at the three public libraries located at 110 N. Glenoaks Blvd., 300 N. Buena Vista St. and 3323 W. Victory Blvd., during normal business hours, and will be posted on the City's website at www.burbankusa.com. Any writings or documents provided to the Council regarding any item on this agenda subsequent to distribution of the agenda packet will be made available for public inspection in the office of the City Clerk at City Hall located at 275 E. Olive Avenue, during normal business hours. If you have a question about any matter on the agenda, please call the office of the City Clerk at (818) 238-5851. The City Council Chamber is disabled accessible. Auxiliary aids and services are available for individuals with speech, vision or hearing impairments (48-hour notice is required). Please contact the ADA Coordinator at (818) 238-5424 voice or (818) 238-5035 TDD with questions or concerns.

A. CALL TO ORDER:

B. CLOSED SESSION IN CITY HALL FIRST FLOOR CONFERENCE ROOM:

a. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Christopher Lee Dunn v. Burbank Police Department, et al. Case No.: BC417928 "Dunn 1" Brief description and nature of case: Alleged wrongful termination due to discrimination.

b. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Christopher Lee Dunn v. City of Burbank, et al. Case No.: BC418792 "Dunn 2" Brief description and nature of case: Defamation and wrongful release of personnel information.

c. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Omar Rodriguez et al. v. Burbank Police Department, et al. Case No.: BC 414602 Brief description and nature of case: Employment discrimination, infliction of emotional distress, and other related causes of action.

d. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: William Taylor v. City of Burbank, et al. Case No.: BC 422252 Brief description and nature of case: Employment discrimination.

e. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Angelo Dahlia vs. City of Burbank, et al. Case No.: CV09-8453 RSWL (JEMx) - 9th Circuit Brief description and nature of case: Civil rights.

f. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Angelo Dahlia vs. City of Burbank, et al. Case No.: EC053483 - Superior Court Brief description and nature of case: Civil rights.

g. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Fernando Munoz vs. City of Burbank, et al. Case No.: EC051171 Brief description and nature of case: Alleged violation of the Public Safety Officers Procedural Bill of Rights Act.

h. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Nick Nichols vs. City of Burbank, et al. Case No.: EC052727 Brief description and nature of case: Alleged violation of the Public Safety Officers Procedural Bill of Rights Act.

i. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Preston Smith vs. City of Burbank, et al. Case No.: BC446016 Brief description and nature of case: Civil Rights.

j. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Jovita Duran v. City of Burbank Case No.: EC051158 Brief description and nature of case: Vehicle accident with a Burbank Police Department employee.

k. Conference with Legal Counsel - Existing Litigation: Pursuant to Govt. Code §54956.9(a) Name of Case: Mary Olguin v. City of Burbank Case No.: EC051093 Brief description and nature of case: Trip and fall on a public sidewalk.

l. Conference with Legal Counsel - Anticipated Litigation (City as potential defendant): Pursuant to Govt. Code §54956.9(b)(1) Number of potential case(s): 7

m. Conference with Legal Counsel - Anticipated Litigation (City as potential plaintiff): Pursuant to Govt. Code §54956.9(c) Number of potential case(s): 2

n. Conference with Labor Negotiator: Pursuant to Govt. Code §54957.6 Name of the Agency Negotiator: Management Services Director/Judie Wilke. Name of Organization Representing Employee: Burbank City Employees Association. Summary of Labor Issues to be Negotiated: Contracts and Retirement Issues.

o. Conference with Real Property Negotiator: Pursuant to Govt. Code §54956.8 Agency Negotiator: Community Development Director/Greg Herrmann. Property: 445 North Front Street, south of 777 North Front Street (the Galpin Ford Site), and "Old" North Front Street from approximately Magnolia Boulevard to Burbank Boulevard. Parties with Whom City is Negotiating: Cavalia USA Inc., Duncan Fisher, Tour Manager; 145 Pine Haven Shores Road, Suite 1121, Shelburne, Vermont USA 05482-7703; 480-309-1988. Name of Contact Person: Grace Coronado, Administrative Analyst II. Terms Under Negotiation: Terms and lease price and lease of the real property.

p. Public Employee Performance Evaluation: Pursuant to Govt. Code §54957 and 54957.6 Title of Employee's Position: City Attorney.

C. CALL TO ORDER:
6:00 P.M.

D. INVOCATION: The Courts have concluded that sectarian prayer as part of City Council meetings is not permitted under the Constitution.

E. FLAG SALUTE:

F. ROLL CALL:

F1. ANNOUNCEMENT: DARK MEETING ON NOVEMBER 30, 2010.

F2. ANNOUNCEMENT: MAYOR'S TREE LIGHTING CEREMONY.

J. PUBLIC COMMENT: (Five minutes on any matter concerning City Business.) A YELLOW card must be completed and presented to the City Clerk.

G. COUNCIL COMMENTS: (Including reporting on Council Committee Assignments)

H. INTRODUCTION OF ADDITIONAL AGENDA ITEMS:

I. REPORTING ON CLOSED SESSION:

J. PUBLIC COMMENT: (Five minutes on any matter concerning City Business.) A YELLOW card must be completed and presented to the City Clerk.

K. COUNCIL, POLICE COMMISSION AND STAFF RESPONSE TO PUBLIC COMMENT:

L. COUNCIL - POLICE COMMISSION JOINT MEETING:

1. STATE OF THE POLICE DEPARTMENT: Staff will provide an update on the state of the Police Department relative to technology updates, crime statistics and trends, response time and other related matters.

Recommendation:

Note and file.

Item No. 1 No Staff Report

2. CURFEW REGULATIONS FOR MINORS: On May 20, 2010, the Council requested a discussion regarding curfew regulations as the first step in the two-step agenda process. Staff will discuss Burbank's ordinances and how they compare with those of surrounding cities. Staff will also discuss the number of juvenile arrests since 2007, the number of curfew arrests since 2007, ratio of curfew arrests to overall juvenile arrests, average age of curfew offenders, gender ratio of offenders, and the breakdown of whether arrests were for the daytime loitering or nighttime curfew violation.

Recommendation:

Note and file

Item No. 2 No Staff Report

3. UPDATE ON THE POLICE DEPARTMENT REFORM PACKAGE: Staff will provide an update on the progress of the Police Department Reform Package which is comprised of the following items: Early Warning Tracking System; Psychological Assistance; Review of Use of Force Policy; Review of Discipline System; Creation of Training Recordation System; Review and Consolidation of Department Manuals; and, Reinforcement of Core Values

and Mission.

Recommendation:

Note and file.

Item No. 3 No Staff Report

4. PUBLIC RELEASE OF CONFIDENTIAL DOCUMENTS REGARDING INDEPENDENT POLICE DEPARTMENT OVERSIGHT: In response to a number of serious concerns about activities at the Police Department the City Attorney's Office retained two expert outside attorneys, Merrick Bobb and Debra Wong Yang, to provide oversight in going forward with Police Department matters. Mr. Bobb has recently provided the City with a draft strategic plan for suggestions on adopting policies, procedures and practices in various areas of police operations. These proposals are not in final form. However, since Mr. Bobb was retained by the City Attorney these proposals are protected by the attorney/client privilege and are thereby confidential. In light of the joint meeting of the Council and the Police Commission, Council Member Golonski has asked that the portion of Mr. Bobb's proposals which refer to civilian participation and oversight be made public. The Council may do so by majority vote.

Recommendation:

Discuss and determine whether to make public that portion of Merrick Bobb's draft strategic plan relating to civilian participation and oversight.

Item No. 4 Staff Report

5. OVERSIGHT MODELS: Staff will present background information on civilian participation and oversight regarding police matters, and discuss the scope and responsibilities of police oversight boards in neighboring jurisdictions. The Police Commission will also discuss information gathered regarding their role and responsibilities as well as recommendations for their future role.

Recommendation:

Staff recommends that the Council and Police Commission discuss the matter and provide direction as desired.

Item No. 5 No Staff Report

M. PUBLIC COMMENT: (Three minutes on any matter concerning the

business of the City.) A GREEN card must be completed and presented to the City Clerk.

N. COUNCIL, POLICE COMMISSION AND STAFF RESPONSE TO PUBLIC COMMENT:

O. ADJOURNMENT.

For a copy of the agenda and related staff reports, please visit the City of Burbank's Web Site: www.burbankusa.com

EXHIBIT "D"

CITY OF BURBANK et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; WILLIAM TAYLOR, Real Party in Interest.

No. B230175

COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION THREE

2011 Cal. App. Unpub. LEXIS 3843

May 23, 2011, Filed

PRIOR HISTORY: [*1]

ORIGINAL PROCEEDINGS in mandate. Los Angeles County Super. Ct. No. BC422252. John Shepard Wiley Jr., Judge.

DISPOSITION: Petition denied.

COUNSEL: Burke, Williams & Sorensen, Ronald F. Frank, Robert J. Tyson, Michele L. Graeler; and Kristin A. Pelletier for Petitioners City of Burbank and Doe Officers 11-17.

Stone Busailah and Michael P. Stone for Petitioners Doe Officers 1-10.

No appearance for Respondent.

Law Offices of Gregory Smith, Gregory Smith; Benedon & Serlin, Douglas G. Benedon, Gerald M. Serlin; and Christopher Brizzolara for Real Party in Interest.

JUDGES: ALDRICH, J.; KLEIN, P. J., CROSKEY, J. concurred.

OPINION BY: ALDRICH

OPINION

INTRODUCTION

Real party in interest William Taylor sued his former employer, petitioner City of Burbank, for retaliation, based on allegations he was demoted and eventually fired from the police department for reporting sexual harassment and racial

discrimination in the department. Burbank, however, said Taylor was fired because he interfered with an internal investigation. Taylor therefore sought internal affairs investigation records under Evidence Code sections 1043 and 1045. After an in-camera hearing, the trial court ordered the records be disclosed. Burbank then filed this writ, claiming that [*2] the in-camera hearing was procedurally flawed and that the trial court ordered irrelevant documents disclosed. We issued a stay of the disclosure order and an order to show cause. We now find that the in-camera hearing was not flawed and that the trial court did not abuse its discretion by ordering all of the documents disclosed. We therefore deny the petition.

BACKGROUND

I. Taylor sues the City of Burbank for retaliation.

Real party in interest Taylor was Burbank Police Department's deputy chief of police. In December 2007, Porto's Bakery was robbed. Allegations that officers committed misconduct during the investigation of the robbery surfaced and were internally investigated in 2008. That investigation led nowhere until 2009, when a witness came forward and another internal investigation was opened. Taylor was a subject of that investigation for allegedly obstructing the original 2008 investigation and failing to thoroughly investigate or act upon possible excessive force incidents committed by department employees during 2007-2009. In 2009, Taylor was told, "Since this present investigation regards events formerly examined in Internal Affairs Personnel Investigation No. 04-26-08-1, [*3] yet is broader in scope and regards subsequent conduct as well, Internal Affairs Personnel Investigation No. 04-26-08-1 shall be incorporated into this investigation 04-16-09-1."

Also in September 2009, Taylor sued Burbank for retaliation under Labor Code section 1102.5 and for retaliation in violation of California's Fair Employment and Housing Act. The complaint alleged that Taylor was demoted for reporting sexual harassment by a police department employee; complaining that Black and Hispanic employees were being fired because of their race; and requesting outside agencies investigate a theft at the police department that Taylor suspected was committed by someone in the department. Taylor was ultimately fired in June 2010, and he therefore amended his complaint in January 2011.

II. Taylor files a discovery motion.

In response to discovery asking Burbank to state why Taylor was demoted, Burbank responded that Chief of Police Tim Stehr lost confidence in Taylor due primarily to allegations that Taylor, who oversaw internal affairs investigations, had interfered in and attempted to influence an internal investigation. Taylor thereafter filed a motion, under Evidence Code sections 1043 [*4] and 1045, requesting, among other things, documents pertaining to any investigation into allegations that Taylor interfered with an internal affairs investigation and, specifically, internal affairs investigations 04-16-09-1 and 04-26-08-1.

In opposition, Burbank stated that after the December 2007 Porto's Bakery robbery, Burbank investigated alleged officer misconduct[1] in connection with that robbery, and the investigation was given the number IA 4-26-08-1.[2] The evidence uncovered did not, at that time, validate the misconduct claims. A year later, in 2009, however, a Burbank officer came forward as a witness to the misconduct, and a new investigation was initiated under No. IA 4-

16-09-1. Investigation No. IA 4-16-09-1 investigated Burbank officers for "alleged misconduct related to the criminal investigation of the Porto[']s Bakery robbery and its aftermath (primarily using force against interview subjects and/or failing to report or trying to prevent the reporting of the use of force against subjects)." (Italics omitted.) That investigation, conducted from November 11, 2009 to March 5, 2010, examined the conduct of over 20 Burbank officers, including Taylor, who allegedly interfered [*5] with the earlier 2008 investigation. The investigation into Taylor concluded on March 31, 2010, and the investigation file about Taylor was given the subnumber IA 4-16-09-1 No. 34. According to Burbank, the investigation of Taylor "stemmed from his actions during the original *internal* investigation into misconduct during the Porto's criminal investigation, IA 4-26-08." (Italics in original.) It was found that Taylor obstructed the internal affairs investigation in the aftermath of the Porto's robbery to protect Lieutenant Omar Rodriguez.

1 The alleged misconduct apparently centered on excessive force.

2 Does 1-10 and 12-16 later joined Burbank's opposition.

The trial court granted Taylor's discovery motion and ordered Burbank to disclose the entire internal investigations file immediately, without any further in-camera hearing. The court found: "Burbank may not take the position that Taylor was removed from his position as deputy chief for good cause, and simultaneously deny Taylor the opportunity to conduct discovery concerning its alleged basis for his removal. [¶] Taylor also seeks the internal affairs investigation files of other officers." "Taylor was a subject of the 2009 internal [*6] affairs investigation because he [had] allegedly interfered with the 2008 investigation. Burbank has turned over to Taylor the documents from the 2009 investigation relating to Taylor, but has refused to turn over documents regarding other officers who were the subject of the 2009 investigation. . . . [¶] . . . Burbank accuses Taylor of interfering with the 2008 internal affairs investigation of misconduct in connection with the criminal investigation of the robbery. Taylor is entitled to examine the 2009 internal affairs investigation to determine how the investigation conducted in 2009 differed from the 2008 investigation to cause Burbank to conclude Taylor interfered with the 2008 internal affairs investigation. [¶] Taylor needs access to the complete 2009 file fully to understand the accusations levied against him in the context of the internal affairs investigations of the investigation of the robbery."

Burbank petitioned this court for a stay of that disclosure order, and we issued a *Palma*[3] notice directing the trial court to hold an in-camera hearing.

3 *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171. Petitioners request we take judicial notice of documents filed [*7] in connection with that prior writ, and we grant the request. (Evid. Code, § 452, subd. (d).)

III. The trial court conducts an in-camera hearing.

In compliance with our *Palma* notice, at a hearing on December 15, 2010, the trial court addressed the upcoming in-camera hearing to review the internal investigation files. The trial court described the "character" of the in-camera inspection: "My bottom line on this is that a custodian with attorney can be present but does not have a right to be present. Certainly, doesn't have a right to speak or to advocate, and the person's presence with

counsel is there really to assist the Court rather than to argue to the [c]ourt. [¶] So that's going to be the role I ask the custodian of records to reflect. We will be creating a transcript as usual, but the phrase that I think got the plaintiff and the [c]ourt a little concerned was the repeated use of the colloquial phrase 'quality time,' implying a lot of chatting and visiting and sharing. No. It's not going to be like that. If I need help, I'll ask for it. Otherwise, we'll proceed in silence. [¶] . . . [¶] . . . [T]he lawyer is there to speak with the custodian and not to make speeches to the [c]ourt. [*8] So the custodian, she or he, has a knowledgeable friend if she or he has questions and wants to say, '[w]hat should I [do] now,' but the lawyer is not to take over and not to use the session to advocate positions of substance."

The in-camera hearing then took place over the next two days, December 16 and 17, 2010. On December 16, the trial court, Burbank's custodian of records, and counsel for the custodian went into the jury room with the court reporter. The court asked the custodian to explain how it had assembled the materials, which were contained in three boxes. The custodian then explained, in some detail, what each box contained, including a box of interviews concerning 38 "sub-investigations" that resulted from the initial review and assessment of the Porto's robbery. Investigation No. 34 concerned allegations that Taylor obstructed the Porto's investigation.

The trial court, due to other matters on calendar, continued the in-camera hearing to the next day, December 17, 2010. The hearing began at 10:30 a.m., and present again were the custodian of records and his attorney. After spending more time going over what was in the three boxes with the custodian, the trial court, because [*9] it was going to silently review the records, told the custodian and his attorney they needn't waste their time watching the court read, but could instead go shopping. The custodian and attorney left the room. After reviewing the documents for several hours by itself, the trial court ruled that they should be turned over in their entirety. Describing the underlying situation as having mushroomed, the trial court found it was Taylor's claim that the records in the boxes were a pretext for his dismissal; hence, they were discoverable.

DISCUSSION

IV. Taylor's motion satisfied the statutory scheme, and the in-camera hearing was properly conducted under that scheme and under *Mooc.*

Our Legislature has established a statutory scheme to discover peace officers' records, and our California Supreme Court has outlined the procedure for their disclosure. Burbank contends that the in-camera hearing the trial court conducted flouted those procedures and resulted in an indiscriminate production of documents irrelevant to Taylor's case. We disagree.

To balance the conflicting interests of a moving party's right to a fair trial and an officer's interest in privacy, in any case, civil or criminal, in which [*10] discovery or disclosure of a peace officer's personnel records are sought, the party seeking disclosure must file a written motion, known in the criminal context as a *Pitchess*[4] motion, that, among other things, describes the information sought and states good cause for the discovery, "setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records." (Evid. Code, § 1043,

subd. (b)(3); see generally, Evid. Code, §§ 1043, 1045; Pen. Code, §§ 832.5, 832.7, 832.8; *Warrick v. Superior Court* (2005) 35 Cal.4th 1011; *People v. Mooc* (2001) 26 Cal.4th 1216, 1226-1227 (*Mooc*).) The affidavit setting forth good cause "may be on information and belief and need not be based on personal knowledge [citation], but the information sought must be requested with sufficient specificity to preclude the possibility of a defendant's simply casting about for any helpful information [citation]." (*Mooc,* at p. 1226.) The good cause showing is a "'relatively low threshold for discovery.'" (*Garcia v. Superior Court* (2007) 42 Cal.4th 63, 70.) If the moving party [*11] fulfills these requirements, then the court examines the records in camera. (*Mooc,* at p. 1226.)

4 *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

At the in-camera hearing, the custodian of records should bring all potentially relevant documents for the trial court to examine. (*Mooc, supra,* 26 Cal.4th at p. 1226.) The trial court then examines that information in chambers "'out of the presence and hearing of all persons except the person authorized [to possess the records] and such other persons [the custodian of records] is willing to have present.'" (*Ibid.,* quoting Evid. Code, § 915; see also Evid. Code, § 1045.)[5] "A court reporter should be present to document the custodian's statements, as well as any questions the trial court may wish to ask the custodian regarding the completeness of the record." (*Mooc,* at p. 1229.) The trial court should make a record of what documents it examined by, for example, photocopying them, listing them, or simply stating for the record what documents it examined. (*Id.* at pp. 1228-1229.)

5 Evidence Code section 915, subdivision (b) provides: "When a court is ruling on a claim of privilege under Article 9 (commencing with Section 1040) of Chapter 4 (official [*12] information and identity of informer) . . . and is unable to do so without requiring disclosure of the information claimed to be privileged, the court may require the person from whom disclosure is sought or the person authorized to claim the privilege, or both, to disclose the information in chambers out of the presence and hearing of all persons except the person authorized to claim the privilege and any other persons as the person authorized to claim the privilege is willing to have present. If the judge determines that the information is privileged, neither the judge nor any other person may ever disclose, without the consent of a person authorized to permit disclosure, what was disclosed in the course of the proceedings in chambers."

Here, Burbank describes an in-camera hearing that violated these procedural requirements. It was a hearing, Burbank charges, at which a "gag order" was placed on the custodian of record's attorney "effectively . . . precluding [him] from objecting to or correcting the improper procedures that followed"; at which the custodian of records and his attorney were "barred" from being present during the trial court's review; at which no "contemporaneous detailed [*13] record" was made; and at which the trial court spent an "inadequate amount of time" reviewing the production. Such a hearing would certainly violate *Mooc,* if such a hearing occurred. It didn't.

There was no "gag order" precluding the custodian of record's attorney from speaking, objecting or otherwise performing his role. The trial court simply

precluded a repeat of argument it had heard several times before. At a hearing before the in-camera proceedings, Burbank's counsel repeatedly said she needed to spend "some quality time" with the court in chambers to explain why the investigations of the other officers had nothing to do with Burbank's conclusion that Taylor interfered with the investigation to protect Lieutenant Rodriguez. Taylor filed an objection to any such ex parte communication, leading the trial court to clarify that the custodian's attorney was not acting as an advocate but was there to assist the court rather than to argue: "Certainly, [the custodian of records] doesn't have a right to speak or to advocate, and *the person's presence with counsel is there really to assist the [c]ourt rather than to argue to the [c]ourt. [¶] So that's going to be the role I ask the custodian* [*14] *of records to reflect.* We will be creating a transcript as usual, but *the phrase that I think got the plaintiff and the [c]ourt a little concerned was the repeated use of the colloquial phrase 'quality time,' implying a lot of chatting and visiting and sharing. No. It's not going to be like that. If I need help, I'll ask for it.* Otherwise, we'll proceed in silence. [¶] . . . [¶] . . . *[T]he lawyer is there to speak with the custodian and not to make speeches to the [c]ourt. So the custodian, she or he, has a knowledgeable friend if she or he has questions and wants to say, '[w]hat should I [do] now,' but the lawyer is not to take over and not to use the session to advocate positions of substance.*" (Italics added.)

The trial court merely said that the in-camera hearing was not an opportunity for Burbank's custodian of records and attorney to argue the merits of the case. This was completely proper. There thus was no "gag order" precluding counsel from objecting to anything he thought might be improper or from advising his client.[6] In fact, the custodian of records engaged in a detailed discussion with the trial court at the hearing and consulted with his attorney multiple times. The [*15] trial court even said it would leave the room to facilitate those consultations. Given these facts, Burbank's statement that the custodian of records was "effectively denied the assistance of counsel," is hyperbolic, even with the qualification of "effectively."

> 6 In connection with an ex parte application filed after the in-camera hearing, Burbank's attorney, Ronald F. Frank, filed a declaration stating that he was prohibited from objecting or otherwise fulfilling his role.

Next, the trial court did not "bar" the custodian of records and the attorney from the room during its review. Judge Wiley proposed a procedure that, given the unwieldy nature of the production, made sense and was in accord with both his obligations under *Mooc* and his notion of professional courtesy. After an in-depth review with the custodian of records of the materials produced, the court said it thought the best way to proceed was for it to review the documents silently. The court proposed that the custodian and attorney return at 2:00 p.m., to give the court a couple of hours to review the materials. The court then asked where it should begin review, and the custodian gave further direction. Thanking the custodian [*16] for his help, the court asked him to return at 2:00 p.m. The custodian said he was happy to stay, but the court suggested he "do some holiday shopping." The custodian of record and attorney, *without objection,* left the room. At 2:20 p.m., the matter went back on the record and the court ruled.

Before the custodian of records and attorney were supposedly "barred" from the room, the contents of the three boxes had been identified sufficiently to allow

both the trial court and an appellate court to conduct a review, and a substantive conversation had taken place between the custodian and the court about those documents, leaving nothing more to be done but for the court to review the documents silently. It is a strained reading of the record indeed that converts this judicial courtesy and commonsense procedure into an order "barring" the custodian and attorney from the room. Moreover, the court reporter was present during the relevant proceedings. That the court reporter was not present while the trial court read silently to itself in no way violates *Mooc*. The court reporter recorded the conversation between the court and the custodian of records, including the identification of the documents, [*17] and *Mooc* requires nothing more.[7]

7 Burbank also briefly suggests that "ordering" the custodian out of the room broke the chain of custody. No authority is cited for this proposition, and we therefore need not address it at any length, except to note that no objection was made on this ground to the trial court and there is no suggestion that the documents ever left the room or were otherwise tampered with.

This brings us to Burbank's next contention: the trial court made an inadequate record of the materials produced and reviewed. *Mooc* does not mandate how that record must be made, but gives examples of how it might be done: a court could photocopy the documents, list them or state for the record what documents it examined. (*Mooc, supra,* 26 Cal.4th at pp. 1228-1229.) *Mooc* neither requires a trial court to list every document it reviews nor would that be feasible where, as here, the production is voluminous. Rather, the purpose of the record is to facilitate appellate review. The trial court's record here achieved that purpose. The trial court specified that there were three boxes, each of which contained a category of documents. The custodian of records, after providing background into [*18] the Porto's Bakery robbery and the internal investigations it prompted, described what was in each box; the first box contained *Skelly*[8] documents for each fired employee; the second box contained six 3-ring binders about the administrative investigation into the Porto's Bakery robbery that led to 38 sub-investigations into officers (No. 34 of which concerned Taylor); and the third box contained audio interviews of witnesses and employees done in the course of the investigation and the investigator's notes. This categorical description of the materials satisfies *Mooc.* It is nothing like the problematic, cursory record made by the trial court in *Mooc* where the trial court merely referred to "'an entire evidence box of files, forms, folders and records'" but only a small envelope was later given to the Court of Appeal for review. (*Mooc,* at p. 1228.)

8 *Skelly v. State Personnel Bd.* (1975) 15 Cal.3d 194.

Burbank, however, also argues that the court failed to comply with *Mooc* because the court "made no contemporaneous detailed record" of what it reviewed. Certainly, a trial court could choose to "contemporaneously" state for the record the document it is then reviewing. But *Mooc* neither requires [*19] a contemporaneous review nor does one necessarily make sense where, as here, the trial court reviews boxes of documents as opposed to just a few pages. All that *Mooc* requires is the trial court to identify, with sufficient description, the documents it reviews to facilitate appellate review. The trial court, by having the custodian of record detail what was in each of the three boxes produced complied with *Mooc.*

Finally, Burbank questions whether the trial court even reviewed the materials, claiming that several hours were insufficient to review records that included a box of audio compact discs. The second day of the in-camera hearing began at 10:30 a.m. After spending some time with the custodian of records, the court reviewed the contents of the three boxes until 2:20 p.m.. The record does not show at what time the custodian of records and attorney left, but it was some time before lunch. When the trial court went back on the record at 2:20 p.m., Judge Wiley said he'd grabbed a bite to eat, but had otherwise worked through the lunch hour. The review, including the time the trial court spent with the custodian of records, therefore lasted over three hours.

Three hours, however, was [*20] not enough time to listen to the "hundreds of hours" of recorded interviews, Burbank argues. We will assume that the trial court did not listen to each and every compact disc from beginning to end. But we do not find that doing so was either a prerequisite or a necessity to determine their discoverability. It was the trial court's job to decide if the discs and other materials might contain relevant information admissible at trial or facts that could lead to the discovery of admissible evidence. (*Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1087; Evid. Code, § 1045.) The custodian explained at length that the discs were witness interviews arising out of the Porto's Bakery internal investigation. From the in-camera discussion between the court and the custodian about those interviews and what they arose out of, the trial court could have, within its discretion, decided that the audio discs concerning investigations into officers other than Taylor *might* contain relevant information or facts that *could lead to* the discovery of admissible evidence. That the trial court engaged in a careful review is made even clearer by the trial court's knowledgeable discussion about the difficulty [*21] in photocopying some of the records, which included internal cellophane, plastic envelopes containing originals, and sketches, and noting that some volumes were missing tabs. Simply put, the transcript from the hearing and the substantial time the trial court put into reviewing the materials show that the court conducted a meticulous review.

The in-camera hearing that in fact took place thus bears little resemblance to the one Burbank portrays in its petition. The attorney for Burbank's custodian of records was allowed to speak and to advise his client; the custodian and attorney spent a significant amount of time with the trial court and were not barred from the room; the trial court made an adequate record of the documents that allowed for appellate review; and the trial court spent a substantial amount of time reviewing those documents. *Mooc* requires nothing more.

V. The trial court did not abuse its discretion by ordering disclosure of all three boxes.

After this procedurally proper in-camera review, the trial court ordered all three boxes to be turned over to Taylor. Burbank contends that Taylor's discovery motion failed to establish good cause for discovery and that the "Gardiner [*22] Investigations" are irrelevant to the subject matter of Taylor's litigation. Again, we disagree.

Taylor's discovery motion, with sufficient specificity, described the information sought, stated good cause for the discovery, and set forth the materiality of the information sought to the subject matter involved in the pending litigation. (Evid. Code, § 1043, subd. (b)(3); see generally, *Mooc, supra,* 26 Cal.4th at pp. 1226-1227.) Burbank, however, argues

that Taylor's motion never requested what Burbank refers to as the "Gardiner Investigations," namely, the investigation into misconduct by Burbank officers, including Taylor, arising out of the Porto's Bakery robbery that led to 38 sub-investigations, of which No. 34 concerned Taylor. The argument is meritless. Taylor's original discovery motion specifically requested those documents. The motion asked for, among other things, all documents concerning internal affairs investigations 4-16-09-1 and 04-26-08-1 and all documents pertaining to the allegation that he interfered with an internal affairs investigation. These requests encompassed the Gardiner Investigations.[9]

9 Burbank's counsel conceded at the original hearing on Taylor's motion [*23] that the motion correctly identified the master investigation number which included the Gardiner Investigations, but she thought it was a typographical error or that Taylor really didn't mean to use the master investigation number. The trial court, quite rightly, dismissed that argument, especially given Taylor's counsel's statement that no mistake was made.

Burbank also argues that production of those documents was unsupported by Taylor's counsel's declaration or by materiality.[10] The standard for disclosure is that the information must be relevant to the subject matter involved in the pending litigation and comply with statutory limits on disclosure. (*Mooc, supra,* 26 Cal.4th at pp. 1226-1227.)[11] A trial court has broad discretion in ruling on disclosure, and a reviewing court should reverse the trial court's determinations only on a showing that the trial court abused this discretion. (*Haggerty v. Superior Court, supra,* 117 Cal.App.4th at p. 1086; *People v. Prince* (2007) 40 Cal.4th 1179, 1286.)

10 Meritless is Burbank's suggestion *no* declaration was filed in support of Taylor's discovery motion, based on this sequence of events: Taylor filed his discovery motion which was supported [*24] by Christopher Brizzolara's declaration. After opposition and a hearing, the trial court granted the motion but erred by ordering disclosure without an in-camera hearing. Upon Burbank's writ, we issued a *Palma* notice directing the trial court to hold an in-camera hearing. The trial court, upon receiving the *Palma* notice, allowed supplemental briefing. Brizzolara did not submit a further declaration in support of his supplemental briefing. The failure to do so did not somehow strike from the record his original declaration, which supported the broad request for master internal investigations file.

11 Limits on disclosure include conduct occurring more than five years before the event or transaction that is the subject of the litigation, the conclusions of any officer investigating a complaint filed under Penal Code section 832.5, facts so remote as to make disclosure of little or no practical benefit. (*Mooc, supra,* 26 Cal.4th at pp. 1226-1227; Evid. Code, § 1045, subd. (b).) Also, if the litigation "concerns the policies or pattern of conduct of the employing agency, the court shall consider whether the information sought may be obtained from other records maintained by the employing [*25] agency" that wouldn't necessitate disclosing individual personnel records. (Evid. Code, § 1045, subd. (c).) There is no showing that these limits apply, nor does it appear that they do, given that the documents

concern a discrete time period from 2007 to 2009.

Christopher Brizzolara, Taylor's counsel, said in his declaration that Taylor reported sexual harassment and racial discrimination to his superiors in the police department. In retaliation, Taylor was demoted, and the stated reason was he obstructed the initial 2008 investigation into the Porto's Bakery robbery.[12] That initial investigation led nowhere until 2009, when an officer came forward and said he witnessed the use of excessive force. A second investigation was therefore launched in 2009 and resulted in 38 sub-investigations, of which No. 34 specifically pertained to Taylor.

12 Burbank does not dispute that Taylor is entitled to the 2008 investigation file and his *Skelly* file. They have apparently been produced.

Burbank's theory of the case therefore is Taylor was fired for interfering with the 2008 investigation; under that theory, Taylor should be limited to discovering sub-investigation file No. 34, which concerns only [*26] him. This, however, is not Taylor's theory of the case. As the trial court aptly explained, it is Taylor's position that Burbank's stated reason for firing him was a sham. In fact, he was fired for reporting misconduct: "[Taylor's] theory makes perfect sense. It is that Burbank says that they are firing Taylor on account of something having to do with these two investigations and Taylor's lawyers say, 'Well, that is just a pretext. There is absolutely nothing to that and if we have access to the files, we will relitigate or litigate' I guess in the first instance 'how valid this investigation was and show it to a jury that it's simply a sham.' "

The sub-investigation files are relevant to Taylor's theory of the case or might lead to the discovery of admissible evidence. Those files are connected to and arose out of the original 2008 Porto's investigation, a point Burbank has conceded. Burbank's notice to Taylor informing him he was being investigated stated he was being investigated for, among other things, obstructing the 2008 internal investigation *and* for failing to investigate or act on possible excessive force incidents committed by department employees during 2007-2009. The noticed [*27] added, "Since this present investigation regards events formerly examined in Internal Affairs Personnel Investigation No. 04-26-08-1, yet is broader in scope and regards subsequent conduct as well, Internal Affairs Personnel Investigation No. 04-26-08-1 shall be incorporated into this investigation 04-16-09-1."

The original 2008 internal affairs investigation led nowhere. But when new evidence came to light in 2009, a second investigation was opened that resulted in 38 sub-investigations concerning alleged officer misconduct. These sub-investigations concerned officers who allegedly committed misconduct during the 2008 investigation for failing to report misconduct or lying about what they saw during the investigation. Although Burbank denies that Taylor was interviewed in connection with or was the focus of the 37 sub-investigations not targeted directly at him, that denial does not preclude mention of Taylor in a context pertinent to his case. It is certainly possible that other officers or witnesses made statements about Taylor that would be relevant to what he did during the 2008 investigation (or perhaps even about sexual harassment and discrimination) that would substantiate either [*28] his or Burbank's theory of the case. The sub-investigations might contain, for example, statements made by the officers concerning Taylor and/or Rodriguez, who Taylor was allegedly

protecting. Those sub-investigations might also show that he was treated differently for similar or more egregious conduct, and therefore he was fired, not because he engaged in any misconduct in connection with the investigation into the Porto's Bakery robbery, but because he blew the whistle on sexual harassment and racial discrimination in the department. More to the point, those sub-investigations might be relevant to Burbank's claim that Taylor generally failed to investigate misconduct committed during 2007-2009.

The trial court therefore did not err in granting Taylor's motion and ordering disclosure. We have only this to add: the trial court, at the original hearing on Taylor's discovery motions, said it would enter a suitable protective order. At oral argument before this court, Taylor's appellate counsel conceded that a protective order is appropriate. We agree but leave it to the trial court to fashion the order.

DISPOSITION

The petition is denied. Petitioners' request for judicial notice is granted. [*29] The stay issued on January 19, 2011 is lifted. Real party in interest William Taylor is to recover his costs from petitioner City of Burbank. The court shall issue an appropriate protective order.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

ALDRICH, J.

We concur:

KLEIN, P. J.

CROSKEY, J.

PROOF OF SERVICE

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years of age, and am not a party to the within action; my business address is 9100 Wilshire Boulevard, Suite 345E, Beverly Hills, California 90212.

On the date hereinbelow specified, I served the foregoing document, described as set forth below on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes, at Beverly Hills, addressed as follows:

DATE OF SERVICE : June 29, 2012

DOCUMENT SERVED : **DECLARATION OF CHRISTOPHER BRIZZOLARA IN SUPPORT OF REPLY RE: MOTION FOR ATTORNEYS' FEES**

PARTIES SERVED : **SEE ATTACHED SERVICE LIST.**

XXX (BY FEDERAL EXPRESS) I caused the aforesaid document(s) to be delivered to Federal Express either by an authorized courier of Federal Express or by delivery to an authorized Federal Express office in a pre-paid envelope for overnight delivery to the addressee(s) as shown on the Service List.

XXX (BY ELECTRONIC MAIL) I caused such document to be electronically mailed to **Christopher Brizzolara, Esq.** at the following e-mail address: samorai@adelphia.net.

XXX (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

— (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

EXECUTED at Beverly Hills, California on June 29, 2012.

Selma I. Francia

SERVICE LIST

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LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC 422 252

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